CERTIFICATE

(18,087.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1901.

No 277.

RUDOLF HELWIG, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES.

ON A CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., AUGUST 6, 1901.

1 The United States Circuit Court of Appeals for the Second Circuit.

RUDOLF HELWIG, Plaintiff in Error,
against
THE UNITED STATES, Defendant in Error.

Writ of Error to the Circuit Court of the United States for the Southern District of New York.

This cause coming on for hearing before the court, and it appearing by the record that there is involved a question of the jurisdiction of the circuit court, it is ordered that the following statement of facts and the question arising thereon be certified to the Supreme Court for its instruction:

Statement.

In February and March, 1895, Rudolf Helwig, plaintiff in error, made three certain importations of wood pulp into the United States, entering the same at the custom-house at the port of New York. As the facts are substantially the same in respect to each importation, except as to values, amounts, date, &c., they are spoken of herein as one importation.

2 At the time when said wood pulp was imported the duty imposed by law on wood pulp was ten (10) per centum ad valorem, (paragraph 303 act of August 28, 1894).

Upon making the entries at the custom-house, Helwig declared the invoice and market value to be marks 191 per ton; the aggregate invoice value of all three importations was $13,252.00 in United States currency; at the time of making the entries Helwig paid to the collector of customs $1,325.20, being the duty upon said wood pulp at the rate of ten (10) per centum ad valorem based upon the invoice value.

The merchandise was thereafter appraised by the United States appraiser, as provided in section 7 of the act of June 10, 1890, (26 Stat. at Large 131), who reported that the foreign market value of said wood pulp was marks 263.70 per ton; Helwig thereupon requested a reappraisement by a United States general appraiser, in accordance with section 13 of the act of June 10, 1890; a reappraisement was had and the United States general appraiser reappraised the market value of said wood pulp at marks 245 per ton net; thereupon Helwig appealed to the board of United States general appraisers, in accordance with said section 13 of the act of June 10, 1890, and said board affirmed the decision of the United States general appraiser, thereby deciding that the foreign market value of said wood pulp was marks 245 per ton net, and making an advance over the invoice and entered value of over twenty-seven per centum.

Thereupon the collector of customs liquidated said entries, fixing the dutiable value of all of said merchandise at $16,792.20, and computing the duty thereon at the rate of ten per centum, at $1,679.20, and made demand upon said Helwig for the sum
3 of $354, being the difference between the amount already paid by Helwig and the amount of duty at the rate of ten (10) per centum ad valorem found to be due on said final reappraisement; thereafter Helwig paid the sum of $354, and that amount is not in question on this appeal.

At the time the collector of customs found said additional sum of $354.00 to be due, as aforesaid, he also found and decided that there was due from Helwig to the United States the further sum of nine thousand and sixty-seven dollars and sixty-eight cents ($9,067.68) and made demand for said amount, said amount being the further sum in addition to the duties imposed by law, ascertained and fixed as provided in section seven of the said act of June 10, 1890, being two per centum of the total appraised value of said merchandise for each one per centum that such appraised value exceeded the value declared in the entry.

Before the commencement of this action, Helwig duly presented his petition to the United States district court for the southern district of New York, claiming that said sum of nine thousand and sixty-seven dollars and sixty-eight cents ($9,067.68) was a penalty, and praying that the district judge would cause an investigation of the facts to be made, in accordance with section 5292 of the Revised Statutes and sections 17 and 18 of the act of June 22, 1874 (18 Stat. at Large, 186) and cause the facts to be stated and transmitted to the Secretary of the Treasury, and praying that said penalty be remitted on the ground that it had been incurred without willful negligence or intent to defraud.

The said district judge caused such summary investigation to be made and a statement of the facts shown thereon was duly
4 transmitted to the Secretary of the Treasury, who, thereafter, and on the 6th day of July, 1898, found and decided that said penalties had been incurred without willful negligence or intention of fraud on the part of said Helwig, and thereupon mitigated the penalties to one-half of the amount thereof, namely, $4,533.84.

Subsequently the collector of customs reliquidated said entries reducing the amount of said further sum to $4,533.84, and again made demand upon Helwig for payment. As Helwig did not pay the amount suit was commenced against him in the circuit court for the southern district of New York, on the 24th of August, 1898. Upon learning of the pendency of that suit, however, the Secretary of the Treasury advised the collector that he revoked his decision of the 6th of July, 1898, and directed the collector to reliquidate the entries at the original amount and to request the United States attorney to institute suit for nine thousand and sixty-seven dollars and sixty-eight cents ($9,067.68).

The collector followed these instructions and again reliquidated the entries accordingly.

The suit then pending was discontinued and the present action begun, including the full amount of the penalty, namely, nine thousand and sixty-seven dollars and sixty-eight cents ($9,067.68).

The case was tried at the circuit court upon an agreed statement of facts.

Upon the reading of the agreed statement of facts, the plaintiff in error moved to dismiss the complaint and for the direction of judgment in his favor on the ground that the action was to recover a penalty or penalties arising under the customs laws, and that under the provisions of sections 629 and 563 of the Revised Statutes, the United States circuit court had no jurisdiction in such an action. The motion was denied and plaintiff in error duly excepted.

The court subsequently directed judgment in favor of the United States for the amount of nine thousand and sixty-seven dollars and sixty-eight cents ($9,067.68), together with interest and costs.

The defendant thereafter sued out his writ of error to this court.

The sum for which judgment was rendered, namely, nine thousand and sixty-seven dollars and sixty-eight cents ($9,067.68), being the "further sum" accruing "in addition to the duties imposed by law," upon wood pulp, under the provisions of section seven of the act of June 10, 1890, the following question is certified as aforesaid:

Question.

Has the United States circuit court jurisdiction of an action to recover the aforesaid "further sum" accruing "in addition to the duties imposed by law," under the provisions of section seven of the act of June 10, 1890, (26 Statutes at Large, 131)?

WM. J. WALLACE,
U. S. Circuit Judge.
E. HENRY LACOMBE, *U. S. C. J.*

UNITED STATES OF AMERICA, *Second Circuit,* } ss:

I, William Parkin, clerk of the United States circuit court of appeals for the second circuit,

Do hereby certify that the foregoing certificate in the case entitled Rudolf Helwig against The United States, was duly filed and entered of record in my office by order of the said court on the 5th day of February, 1901, and as directed by said court the said certificate is by me forwarded to the Supreme Court of the United States for its action thereon.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the said United States circuit court of appeals for the second circuit, this 6th day of February, in year of our Lord one thousand nine hundred and one.

[Seal United States Circuit Court of Appeals, Second Circuit.]

WM. PARKIN,
Clerk of the United States Circuit Court of Appeals for the Second Circuit.

7 [Endorsed:] United States circuit court of appeals, second circuit. Rudolf Helwig *v.* United States. Certificate to Supreme Court. United States circuit court of appeals, second circuit. Filed Feb. 5, 1901. William Parkin, clerk.

Endorsed on cover: (Certificate.) File No. 18,087. U. S. C. C. of appeals, 2nd circuit. Term No. 277. Rudolf Helwig, plaintiff in error, *vs.* The United States. Filed March 21st, 1901.